IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.535 OF 2006

In

WRIT PETITION NO.1447 OF 2003

Mr.Shrikrishna Gopal Hadkar : Appellant
(Orig.Petitioner)

V/s.

M/s.Apollo Textile Mills & Anr. : Respondents
(Orig. Respondents)

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Ms Hutoxi Tavadia i/b. Mr.Mahesh Thorat for the appellant.

Mrs.Meena Doshi with Mr.A.V.Joshi for the respondents.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : AUGUST 22, 2006.

P.C.

1. Heard.

2. The appellant was charged for misconduct of theft/fraud/misappropriation of ration grains in the grain-shop run by respondent No.1. On 28.10.1996, it was found that there was a shortfall in actual stock of wheat from the stock shown in the stock book. In the panchanama, there is no explanation by the appellant about the shortfall. An inquiry into the misconduct of the

appellant was instituted and the charge was held proved and the appellant was dismissed from service on the basis of the report submitted by the Inquiry Officer. The appellant filed a complaint under item (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short the "MRTU & PULP Act"). In the said complaint, on a preliminary issue, it was held that the inquiry was not fair and proper. Consequently, the employer was given an opportunity to prove the charge of misconduct in Court. Evidence was led by the employer. In defence, the appellant also led evidence. The Third Labour Court considered the said evidence and held that the employer has been able to prove the allegations of misconduct against the present appellant. The Labour Court also held that the punishment of dismissal awarded to the appellant was not shockingly disproportionate. Aggrieved by the order dated 18.2.2002, the present appellant preferred a Revision Application before the Industrial Court. The Revision Application was dismissed by the Industrial Court. The present appellant then filed a Writ Petition before this Court challenging the orders of the Labour Court and the Industrial Court. The Writ Petition was dismissed by the learned single Judge on 20.4.2006, giving rise to the present appeal.

3. The learned counsel for the appellant sought to

contend that the finding of the Labour Court that the misconduct was proved was perverse. She submitted that the procedure prescribed by the State Government regarding regulation and control of ration shops was not followed. She also submitted that the punishment of dismissal is grossly disproportionate to the charge proved.

4. None of the contentions has any merit. The employer led evidence before the Labour Court to prove that there was a shortfall in actual stock of grain from the stock as per the stock book. The shortfall appears to be about 181 kgs. As per the stock book, the stock of grain was 1,246 kgs., while the actual stock was found to be 1,065 kgs. In the panchanama which was drawn immediately after the incident occurred, there is no explanation by the appellant about the shortfall. Before the Labour Court also, the appellant could not produce any reliable evidence that there was no shortfall or justification for the shortfall. On consideration of the evidence, the Labour Court reached the finding of fact that the allegations of misconduct are proved. The said finding cannot be said to be based on no evidence or perverse. As to whether the appellant was guilty of theft/fraud or misappropriation of the employer’s property has to be seen from the evidence that was led before the Labour Court and merely because the Rationing Inspector was not informed of the matter or that no complaint was made to the Rationing

Inspector would not show that the charge of fraud/theft or misappropriation was not proved. The finding of fact recorded by the Labour Court has been found proper by the Industrial Court as well as by the learned single Judge. We find no justifiable ground to take a different view.

5. As regards the contention of the counsel for the appellant that the punishment of dismissal is disproportionate to the charge proved, suffice it to say that the appellant was accused of a grave charge of theft/fraud/misappropriation of the employer's property i.e. stock of grains in the grain shop meant for their employees. The charge of theft having been proved, the punishment of dismissal by no stretch of imagination can be said to be disproportionate. In a matter like this where an employee has been found to have committed theft or misappropriated the employer's property i.e. grains in his trust meant for other employees, the order of dismissal cannot be said to be improper, much less shockingly disproportionate.

6. No case for interference with the impugned order is made out.

7. The appeal is dismissed in limine.

R.M. LODHA, J.

S.A. BOBDE, J.